

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 96-57

August 28, 1996

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Coordination of Cases Involving Overnite
Transportation Company

By Memorandum OM 96-31, Regions were provided additional guidance on the handling of charges filed against Overnite Transportation Company, particularly the "early warning" procedures set out in Memorandum OM 95-71.

There have been some recent discussions with Overnite Transportation Company concerning the implementation of the early warning procedure set forth in the Overnite settlement stipulation. As you are aware, that procedure provides, inter alia, that :

The charge will be investigated by the Regional Office in which the charge is filed. In the event that the evidence discovered in the investigation points to a violation, Respondent's designated agent will be notified as soon as possible by facsimile transmission and given a written summary of the evidence supporting the alleged violation.

The key aspect of the early warning procedure is the written summary of the evidence supporting the allegation. This written summary should be based upon evidence uncovered in the investigation of the charging party's case and not on allegations. The purpose of this procedure was to permit Overnite to respond to the charge based upon evidence not allegations and to give them an opportunity to resolve the matter before any merit determination was made. Thus, the intent behind this procedure would also apply in situations where Overnite's response required additional investigations. If, during that process, additional evidence was adduced that pointed to a violation, a summary of that evidence should be sent to Overnite. For example, if an

alleged discriminatee asserts that the reason for the discharge is unknown and Overnite's response supplies a reason, further investigation will result. If that further investigation points to a violation (e.g., the reasons given are pretextual based on disparate treatment) a summary should be provided to Overnite.

As a rule of thumb, if the charging party evidence requires an employer response, it probably requires an early warning letter. Please continue to provide Region 18 drafts of your early warning letters pursuant to Memorandum OM 96-31.

Assistant General Counsel Anne Purcell will now be coordinating cases involving Overnite Transportation Company for the Division of Operations-Management. Any questions concerning that matter should be directed to Assistant General Counsel Purcell at 202-273-2889 or your Assistant General Counsel. Thank you for your ongoing cooperation.

B. A. B.